DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/8/09 (amendment) and 8/28/08 (argument) has been entered.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52 and 53 are amended.

Claims 1, 4-7, 9, 10, 14-17, 21, 23, 24, 32, 33, 36-43, 47, 51, and 54-56 are cancelled.

Claims 57-78 are newly presented.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are presently pending.

Claim Status, Cancelled Claims

In light of the cancellation of Claims 1, 4-7, 9, 10, 14-17, 21, 23, 24, 32, 33, 36-43, 47, 51, and 54-56, all rejections and/or objections to such claims of record are rendered moot, and thus, are withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 44-46 and 70 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 44-46 recite limitations to concurrent, alternate, and oppositely charged aerosols. However, the parent claims do not claim more than a single aerosol. There is insufficient antecedent basis for these limitations.

Claim 70 recites "said charged aerosol" in Claim 72. There are two charged aerosols in the parent claim. Therefore, the claimed limitation lacks proper antecedent basis.

Note: Art Rejections and ODP rejections

The Art and ODP rejections previously of record are been withdrawn, in favor of the same rejections with the addition of the Placke reference below, in order to make clear that the Artisan was not incapable of applying EHD to animals and application to their surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 57, 3, 8, 12, 13, 18-20, 52, 22, 49, 50, 58, 60, 70, 26, 71, 44-46, 62-64, 67-69, 72-77, 73, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Nos.

5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke, and 4,334,504 to Matthews.

Coffee '517 teaches single-nozzle EHD delivery devices for delivery of substances by spray into the respiratory tract (e.g., ABSTRACT) and further, to avoid the lower respiratory tract of humans, particles should be 10 microns or above, and Coffee '877 teaches dual-nozzle devices for similar delivery of substances (e.g., ABSTRACT). Further, Coffee teaches particles of 10 to 200 microns, for avoiding the lower respiratory tract (Brief Summary of the Invention, paragraph 25). Moreover, it is disclosed that such EHD devices have been used in a wide variety of applications where aerosols are applied, ranging from crop spraying to inhalers (Brief Summary, First 10 paragraphs). Further, multiple spray streams are taught (e.g., Brief Summary, paragraph 5). Still further, the neutralization of charges is noted to be known in the Art (e.g., Brief Summary, paragraph 12), for delivery of neutrally-charged particles.

Maget '194 teaches a liquid spray dispenser for dispensing, inter alia, insecticides and therapeutics transdermally to horses (e.g., ABSTRACT, EXAMPLE 3).

Placke `209 teaches the use of EHD to apply substances to mammals, which clearly includes domestic animals, including horses (e.g., paragraph 17 after TABLE 3). Hence, the Artisan is aware of EHD to deliver substances to mammals, including horses.

Matthews '504 teaches an animal spraying apparatus, which applies liquids to the surface of the animal as it moves back and forth through the passageway (e.g., ABSTRACT). This is noted to parallel that of inhalers, but to be applied to the surface of animals, via a different aerosol-generating mechanism.

Hence, at the time of invention, it would have been obvious to apply the Mathews '504 apparatus, in combination with the EHD delivery device(s) of Coffee, and do so to horses, as further taught in Matthews, as Placke teaches such EHD in treating horses, making the Artisan aware that EHD provides the same effect of an aerosol of droplets, which can be dialed-in in size. Because the references teach similar methods of spraying animals to obtain various therapeutic and cosmetic alterations, it would have been obvious to the Artisan to utilize any combination of these elements to provide the predictable result of distributing one or more therapeutics and/or cosmetics to the animal without allowing the particles to enter the lower respiratory tract of humans.

With regard to the distribution and standard deviation requirements of Claim 8, because the mechanics of fluid flow, nozzle size, and the relation to droplet size are understood and controllable to the artisan (this is official notice), absent reason to believe otherwise, the Artisan would necessarily obtain such distributions, in order to deliver more uniform products.

With regard to the curved trajectories, the fluids are influenced by gravity, and hence achieve the same planar distribution along the curved surfaces of the animal. Still further, the wraparound effect is necessarily present (e.g., Applicant's FIGURE 2b).

With regard to avoiding dermatitis, etc., the Artisan would necessarily do so in order to avoid negatively affecting the animal.

With regard to alternating the discharges, and opposite charges, the Artisan would simply find such to be design choice, and alternating the charges would be obvious as it allows the dispersed substances to attract each other on the surface of the animal.

With regard to the acoustic emission, the discharge of liquid necessarily would cause sound to be generated.

With regard to using a handheld device, the Artisan would also find such obvious, as it has been done at small farms for many years. E.g., horse owners have for many years applied sprays to control insects, mites, fungi, and other pests from growth on their horses, and they have no need for a large device, such as that of Matthews, and still further Applicant's own application admits that such applications are known in the prior art (e.g., FIGURE 1).

With regard to the liquid carrier, all substances applied are in liquid form, and as such, would be in an aqueous, organic or oil carrier.

Response to Argument – Obviousness, Coffee *'877*, Coffee *'194*, Maget, Placke, and Matthews

Applicant's argument of 8/28/08 has been fully considered but is not found persuasive.

Applicant argues that the Coffee references are directed to nasal applications, that they do not teach or suggest administration to the surface of an animal, and although a broad particle size is encompassed, in actual practice, those larger than 30-50 would be expected to coalesce in the nose to form larger drops which would drip out of the nose wasting drug (pp. 14-15, paragraph bridging).

Such is not persuasive. Coffee is not utilized as an anticipatory reference. Coffee is utilized for its teachings as a form of aerosolization of active ingredients. How hard can it be to apply this to another form of aerosol application? The apparatus forms an aerosol, and another aerosol is taught by Matthews. Distinct forms of aerosol development are still aerosol development. Hence, these are just distinct methods of obtaining the same result, an aerosol.

Applicant argues that the second Coffee reference describes a different type of EHD from the first Coffee reference, configured for delivery to the deep lung, and Applicant requires non-respirable aerosols (p. 15, paragraph 2).

Such is not persuasive. What the second Coffee reference demonstrates is that EHD may be utilized for distinct aerosol size requirements. Hence, it is clear that this EHD may be utilized in any mechanism that requires particular aerosol size requirements, not just a single type of Application. This is exacerbated by the reconition in the Art of the use of EHD in things like crop-dusting, a completely distinct, and completely surface-applied, application. Clearly, the Artisan aware of EHD would be aware of the possibility to use EHD for delivery in any case an aerosol is utilized, with advantages in size distributions being controllable.

Applicant argues that the Magat reference does not teach aerosolization of a liquid, and their device is a patch (p. 15, paragraph 3).

Such is not true, nor is it persuasive. Magat clearly teaches the administrations of aerosols throughout the specification. Moreover, Magat is not limited in what may be used to that which is the invention. Hence, even if Magat disclosed as the invention solely a patch, those teachings of aersols being applied to obtain results still teach that it is the Aerosol which is important, and not the mechanism of making the aerosol, as long as the obtained aerosol has the desired characteristics to obtain treatment.

Applicant argues that Magat would never be considered by the Artisan to be pertinent prior art (p. 15, penultimate paragraph).

Such is not persuasive. Magat is not limited to its claimed invention, its teachings are its teachings. Magat demonstrates that the Artisan understands how to apply aerosols, and the form

of making the aerosol is not important, what is important is that it is an aersol of the desired characteristics.

Applicant argues that Matthews is a liquid containing an active agent, and is sprayed onto one side of the animal then the other, but there is nothing to do with aerosolization, much less by EHD (pp. 15-16, paragraph bridging). Further it is noted by Applicant that citations to Matthews are limited to fluids, not aerosols, and citing Bragulia as an example (p. 16, paragraph 2).

Such is not persuasive. Applicant argues that Matthews teaches "spraying". A spray is a dispersion of fine droplets in the air, which is a gas. Such is an aerosol. If it wasn't an aerosol, it would be painted as a stream on the animal, as such is the normal terminology utilized in the livestock art. Lastly, as far as the Examiner can tell, the wording throughout the specification is one that indicates a spray, not a stream, and clearly, Figure 2 indicates a spray evolving from the nozzles (parts 120, 88, 82, and 118). Next, the use of Matthews by the subsequent Art is of little consequence, as Matthews teaches what it teaches. The Examiner believes the Artisan would understand "spray" to be an aersol, not a stream. Lastly, official notice has been given that the Artisan has utilized spray bottles to apply similar substances to their horses or other companion animals for years. The Examiner's own parents done so many times on dogs, cats, and horses, and the Examiner has seen them do it even more than 20 years ago. Hence, as is provided in the rejection, the use of aerosols is clearly not an alien thing which the Artisan would never be able to understand or contemplate for application of substances to animal surfaces.

Applicant reviews the Bragulia patent, and argues that the level of skill is one of a farmer, rancher or dairyman, and therefore, they could not have adapted EHD (p. 16).

Such is not persuasive. Is the Artisan limited to the end-user? Or is it limited by those who would be aware of the application of medicines? The Examiner argues that the inventor is aware of the application of pesticides and cosmetics to animals, such as horses, and how it is best done, to avoid negative effects. Clearly, these same Artisans are aware of EHD, as evidenced by Placke, as such is another medicament which is administered to these same animals. Moreover, the Bragulia reference is not addressed, as it is not part of the rejection, and further, is post-filing evidence which has nothing to do with the rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 57, 3, 8, 12, 13, 18-20, 52, 22, 49, 50, 58, 60, 70, 26, 71, 44-46, 62-66, 67-69, 72-77, 73, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke, and 4,334,504 to Matthews as applied to claims 57, 3, 8, 12, 13, 18-20, 52, 22, 49, 50, 58, 60, 70, 26, 71, 44-46, 62-64, 67-69, 72-77, 73, and 78 above, and further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo.

As shown above, the Coffee, Maget, Placke, and Matthews patents make obvious the various aspects of the previously-rejected claims, however, the do not make obvious the use of surfactant carriers or the use of a combination of a neonicotinoid and a pyrethroid.

On the other hand, Ramsey teaches washing animals in a similar device with shampoos which may include a surfactant (e.g., ABSTRACT; col. 3, paragraph 2).

Further, Sembo '017 teaches the use of ectoparasite controlling agents, which are neonicotinoids, for treatment of animals externally (e.g., ABSTRACT and col. 1, paragraph 5) and Franklin '253 teaches the use of pyrethroids for treatment of animals by inter alia sprays (e.g., ABSTRACT).

Hence, it would be obvious to include the shampoos of Ramsey at the same time and include the pyrethroids and neonicotinoids of Sembo and Franklin. The Artisan would have been motivated to do so in order to clean the animal. Moreover, the artisan would have expected success, as Ramsey, Sembo and Franklin teach that it can be done this way to clean the animals.

Response to Argument – *Obvousness, Matthews '877, Matthews '194, Coffee, Maget,* Placke, Matthews, Ramsey, Franklin, and Sembo

Applicant's argument of 8/28/08 has been fully considered but is not found persuasive.

Applicant argues that Ramsey is at the level of the operator of a slaughter house, and hence, the Artisan would not be motivated to utilize it, as the operator of the slaughter house would not be aware of the intricacies of EHD (p. 17, paragraphs 3-4).

Such is not persuasive. The Placke reference makes clear that the Artisan is aware of EHD for applications of substances to animals. Moreover, Ramsey simply is utilized to demonstrate that the Artisan is aware of spraying detergents onto animals to clean them.

Applicant argues that Franklin adds nothing to the rejection (p. 17, paragraph 5).

Such is not persuasive. Franklin teaches that the Artisan is aware of the application of various substances of cosmetic and medical treatment which are applied topically to the animal.

Applicant argues that Franklin does not teach a method of EHD, but simply the application of the various substances, and there is no reason to believe that these substances could be applied by EHD because the voltage might be too high (pp. 17-18, paragraph bridging).

Such is not persuasive. The Artisan, being aware of the use of EHD would be able to utilize formulations which would work. Moreover, the amount of voltage applied could be too high to be utilized en mass by the Artisan, but that does not mean it would not work. Lastly, Applicant's own specification fails to recognize this same aspect, and hence, Applicant, by providing no such description, would fall into the same pitfall for lack of written description. On the other hand, the Examiner agrees that the Artisan, understanding EHD, would know how to formulate it properly, and the methods would work anyway.

Applicant argues that Sembo is limited to spot-on or pour-on applications, and as such Sembo does not teach aerosols, and there is no reason for the Artisan to use EHD (p. 18, paragraphs 3-4).

Such is not persuasive. As shown in Placke, the Artisan is aware of EHD, and can utilize the method to deliver substances. Any argument that Applicant's method would not reasonably work for the same active substances applies to Applicant's own description. However, the Examiner disagrees, and argues taht the Artisan, being aware of EHD could modify the formulation for such applications.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 57, 3, 8, 12, 13, 18-20, 52, 22, 49, 50, 58, 60, 70, 26, 71, 44-46, 62-64, 67-69, 72-77, 73, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke, and 4,334,504 to Matthews as applied to claims 57, 3, 8, 12, 13, 18-20, 52, 22, 49, 50, 58, 60, 70, 26, 71, 44-46, 62-64, 67-69, 72-77, 73, and 78 above, and further in view of U.S. Patent No. 6,302,331 to Dvorsky, for reasons of record.

As shown above, the Coffee, Maget, Placke and Matthews patents make obvious the various aspects of the previously-rejected claims, however, to emphasize the use of uncharged particles also, the rejection is maintained here.

On the other hand, Dvorsky teaches the use of such to deliver uncharged particles (e.g., col. 4, paragraph 3).

Hence, at the time of invention, it would have been obvious to further modify the methods to deliver an uncharged particle via EHD. The Artisan would have done so, as it is merely one of design choice. Moreover, the artisan would have had a reasonable expectation of success, as Dvorsky teaches it can be done.

Response to Argument – *Obvousness, Matthews '877, Matthews '194, Coffee, Maget,* Placke, Matthews, Ramsey, Franklin, Sembo, and Dvorsky

Applicant's argument of 8/28/08 has been fully considered but is not found persuasive.

Applicant argues that the references are limited to those respirable by the subject, and as such, there is no motivation for non-respirable aerosols (p. 19, paragraphs 1-5).

Such is not persuasive. The motivation is logic. In applying a toxic compound that kills a pest, it is clearly inherent that the Artisan does not wish to breathe that same substance into their body. The Art also recognizes the same ability to have distinct size particles by EHD. Hence, it is a simple design choice to avoid respiration of the same particles, and hence, the Artisna would apply such topical products in such a size as to avoid respiration. The Artisan here is clearly aware of this, and would do so avoid poisoning himself/herself, or the animal itself.

Applicant argues Matthews and Ramsey are not related to aerosolization using EHD or a method of using aerosols to deliver active agents, and therefore, these are not relevant prior art references (pp. 19-20, paragraph bridging).

Such is not persuasive. Matthews and Ramsey are utilized in 103 rejections, not 102 rejections. The Art must be considered as a whole, not in piecemeal fashion.

Applicant argues Magat is to a trandermal pad, and Applicant develops an aerosol by EHD (p. 20, paragraph 2).

Such is not persuasive. Magat is not limited to their disclosed invention, but evidences that aerosols are known in the Art for similar applications of veterinary and medical products.

Applicant argues Franklin and Sembo do not describe aerosols (p. 20, paragraph 3).

Such is true, but not persuasive. The references describe other substances to administer topically to similar subjects.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

As there are many rejections under this category, the rejections will be further explained after a summary of each rejection.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,655,517 in view of U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke, and 4,334,504 to Matthews, and/or further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo and or further in view of U.S. Patent No. 6,302,331 to Dvorsky.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 5,813,614 in view of U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke, and 4,334,504 to Matthews,

and/or further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo and or further in view of U.S. Patent No. 6,302,331 to Dvorsky.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,915,377 in view of U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke and 4,334,504 to Matthews, and/or further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo and or further in view of U.S. Patent No. 6,302,331 to Dvorsky.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,105,571 in view of U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke and 4,334,504 to Matthews, and/or further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo and or further in view of U.S. Patent No. 6,302,331 to Dvorsky.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 24-26 of U.S. Patent No. 6,252,129 in view of U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke and 4,334,504 to Matthews, and/or further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo and or further in view of U.S. Patent No. 6,302,331 to Dvorsky.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-

15 of U.S. Patent No. 6,386195 in view of U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke and 4,334,504 to Matthews, and/or further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo and or further in view of U.S. Patent No. 6,302,331 to Dvorsky.

Claims 3, 8, 11-13, 18-20, 22, 26-30, 44-46, 49, 50, 52, 53, and 57-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-52 of U.S. Patent No. 6,595,208 in view of U.S. Patent Nos. 5,655,517 to Coffee, et al., 6,105,877 to Coffee, et al., 5,928,194 to Maget, 6,348,209 to Placke and 4,334,504 to Matthews, and/or further in view of U.S. Patent Nos. 6,029,610 to Ramsey, 6,130,253 to Franklin, et al., and 6,201,017 to Sembo and or further in view of U.S. Patent No. 6,302,331 to Dvorsky.

As shown in the art rejections, the various aspects of the invention are already obvious, however, further, the various patents each claim specific EHD devices with particular characteristics. As such, it would have been obvious to modify the Art to provide the particular characteristics of any particular device claimed. Such is simply the substitution of a known part with an equivalent part for the predictable outcome of applying such substances topically to animals.

Response to Argument - Double-Patenting rejections

Applicant's argument of 8/28/08 has been fully considered but is not found persuasive.

Applicant argues that the claims of the patent are to the devices and the present claims are to a method of use. As such, Applicant argues they are not a mere variation (pp. 21-22).

Such is not persuasive. Although it is true the claims may be to the device, and the present claims are to the use, the use method itself requires the EHD. It would be obvious make the EHD device in the method, as it is required for its use. Moreover, Applicant's prior patents are not restricted from the claimed method of use.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT M. KELLY, Art Unit 1633, whose telephone number is (571)272-0729. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on (571) 272-07390739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/ROBERT M KELLY/
Primary Examiner, Art Unit 1633